

## **EXHIBIT 3**

# Nelson Mullins

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November 20, 2015

### VIA E-MAIL AND FEDERAL EXPRESS

Paul L. Stoller, Esq.  
Gallagher & Kennedy  
2575 E. Camelback Road  
Suite 1100  
Phoenix, AZ 85016

**Re: ESI Issues**

Dear Paul,

I am writing to further respond to your November 5, 2015, letter relating to ESI issues.

### Architecture of Bard's IT Systems

In your letter, you very broadly request information relating to Bard's information systems and infrastructure.

I recently provided you the transcript of the 30(b)(6) deposition of John Olenoski, which addresses many of the topics you raised regarding Bard's IT systems. In connection with Mr. Olenoski's deposition in the women's health litigation, we produced an extensive amount of corporate-related IT policies and procedures. I have provided those to you, as well as the IT policies and procedures that were previously produced to members of the PSC. After reviewing the deposition and extensive material provided to you, please let me know if you have any remaining questions.

I also previously provided to you the letters we exchanged with Troy Brenes relating to shared drives and the Master Control System (formerly QUMAS) document control system, which John Olenoski addressed, to some extent, in his 30(b)(6) deposition. Over the years, we have also collected documents from these drives and systems in responding to discovery.

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### **Bard Litigation Hold and Document Destruction Policies**

Bard began issuing legal holds relating to the Bard IVC filter litigation in December 2004. Since that time, Bard has periodically updated those holds.

Again, I believe that the corporate policies and the 30(b)(6) deposition of John Olenoski that I have provided to you will answer most, if not all, of the questions you have raised regarding Bard litigation hold and retention policies. If you still have questions after reviewing that material, please let me know.

### **Bard's Collection Efforts/Reports**

The first document collection relating to the Bard IVC filter litigation occurred in 2005 and included collection from over 70 custodians and also included collection of shared drives. The material was gathered by our firm without the use of an outside vendor. I am attaching a list of custodians for whom ESI was collected and produced from that collection.

Since that time, there have been additional collections and productions, including in 2010/2011 with the assistance of BIA, a discovery vendor. I am attaching a listing of the custodians for whom ESI was produced from that timeframe. BIA's ESI Report that I recently provided you includes a list of the "priority" custodians for whom ESI was produced in 2013. I am attaching that again for your convenience.

As part of our past productions to members of the PSC, we have previously provided file path information and custodian information as part of the produced metadata, so you should already have access to that information.

### **Bard's Methodology for Determining Responsiveness**

As you know, we have used keyword terms throughout the history of the litigation to identify responsive documents. Those keyword terms were negotiated and agreed to with opposing counsel during the early phase of the litigation. Thereafter, we had significant negotiation and motion practice with the Lopez McHugh firm in the *Phillips* matter. I recently provided you with the background material relating to the ESI/keyword terms used.

### **Format of Production**

After extensive negotiations and litigating the issues in the past, ESI has been produced in \*.tiff image format, with the exception of electronic spreadsheets (e.g., Excel), electronic presentations (e.g., Powerpoint), and audio/video files, all of which were produced in native format, unless they were subject to redaction (e.g., for privilege or privacy information), in which case they were produced in \*.tiff or a redacted native format.

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**Plaintiff ESI/Social Media**

As to ESI and social media regarding the MDL plaintiffs, what has been done in the past and what is being done now to ensure that relevant ESI relating to the plaintiffs and their claims is being preserved, collected, and produced?

Have the plaintiffs been notified of their duties to preserve ESI? If so, when and in what manner were they notified?

Has anything been collected? If so, when? Also, what methodology and search process has been employed to collect potentially-relevant ESI? How has the location of potentially-relevant information identified?

In addition, what steps have been taken in the past and what steps are being taken now to ensure that potentially relevant social media (e.g., Facebook, Instagram, Twitter, YouTube, etc.) is being preserved, and what steps are plaintiffs taking going forward?

Sincerely,

A handwritten signature in blue ink that reads "Matthew B. Lerner". The signature is stylized with a large, flowing "M" and a cursive "Lerner".

Matthew B. Lerner

MBL:jbruner

Enclosures

**Bard IVC Filter Litigation****ESI Collection (2005/2006)**

<b>Custodian</b>	<b>Title</b>	<b>Location</b>
Allen, Shari	Director	Tempe
Almazan, Dan	Engineer I	Tempe
Balutowski, Genevieve	Regulatory Affairs Specialist	Tempe
Barker, Elaine	Facility Compliance Auditor	Glens Falls
Barry, Brian	Former Vice President, Regulatory and Clinical Affairs	Murray Hill
Bebb, Deb	Senior Technician	Tempe
Bell, Marie	Planner	Glens Falls
Benware, Charlie	Project Engineer	Glens Falls
Brown, Brian	Senior Cost Analyst	Tempe
Byrne, Mike	Supply Chain Manager	Tempe
Campbell, Charis	CA Manager	Tempe
Carr, Robert	Former Director, Research and Development; Current Director of Technology, Acquisition & Integration	Tempe
Chanduszko, Andre	Staff Engineer	Tempe
Chapman, Loran	Quality Engineer	Glens Falls
Cherry, Joe	Manufacturing Operations	Murray Hill
Chunko, Kerry	Manager	Glens Falls
Ciavarella, David	Staff Vice President Corporate Clinical Affairs Division PAT	Murray Hill
Collins, Harvey	Staff Engineer	Glens Falls
Curtice, Brett	AME Senior Engineering Tech	Tempe
Czelusniak, Kathy	Senior Project Engineer	Glens Falls
Decant, Len	Vice President, Research and Development	Tempe
DeJohn, Joe	Former Vice President, Sales	Tempe
DuBois, Tom	Quality Engineering Manager	Glens Falls
Dunn, Chris	Quality Engineer	Tempe
Edholm, Tom	Materials Manager	Glens Falls
Elton, Rich	Staff Chemist	Glens Falls
Felt, Carol	Nitinol Filter Team Leader	Glens Falls
Ferari, Tom	Contract Quality Engineer	Glens Falls
Fitzpatrick, Ed	Engineering Manager	Glens Falls
Gallagher, John	Senior Project Engineer	Glens Falls

<b>Custodian</b>	<b>Title</b>	<b>Location</b>
Gamble, Tashunda	Quality Engineer	Glens Falls
Ganser, Christopher	Vice President, Regulatory Sciences Investigative Team	Murray Hill
Gonzales, Kim	Document Control (Label Coordinator)	Tempe
Gordon, Jeanne	Complaint Coordinator	Tempe
Graves, Micky	Senior Engineer	Tempe
Harmison, Heather	Senior Engineer	Tempe
Hayes, Wendy	Quality Systems Manager	Tempe
Hudnall, Janet	Marketing Manager (Filters)	Tempe
Hudson, Brian	Quality Engineer	Tempe
Jaramillo, Lindsay	Engineer I	Tempe
Jones, Kellee	Admin Assistant (MAUDE, Patient Matrices, Customer Communications, Market Surveys)	Tempe
Klocke, Stephanie	Senior Engineer	Tempe
Krueger, Bill	Vice President, Accounting	Tempe
Kumming, Mark	Professional Development	Tempe
Lapid, Inbal	Engineer I	Tempe
Lyke, Stephanie	Quality Engineer (Complaint Samples/Investigation)	Tempe
Madia, Frank	Project Engineer	Glens Falls
McDermott, John	President	Tempe
Meyer, Steve	Planning Supervisor	Glens Falls
Michelena, Zona	Former admin assistant to Filter Marketing Mgr	Tempe
Miller, Jonathan	Senior Quality Engineering Tech	Tempe
Minske, Mary	Exec Assistant	Tempe
Muir, Kristin	Admin Assistant	Tempe
Nielsen, Mary	Administrative Assistant	Tempe
O'Brien, Jim	Senior Technician	Tempe
Palermo, Pete	Quality Assurance	Murray Hill
Passero, Donna	Assistant General Counsel	Murray Hill
Peck, Rhonda	Master Scheduler	Tempe
Reinsdorf, Judy	Vice President, General Counsel and Secretary	Murray Hill
Reyes, Phillip	Intern	Tempe
Shahriari, Kreshmeh	Quality Engineering (Wire Qualification)	Tempe
Shick, Eric	Former Vice President, Investor Relations; Current Vice President, Operations Strategic Programs	Murray Hill

<b>Custodian</b>	<b>Title</b>	<b>Location</b>
Shifrin, Kevin	Vice President, Marketing	Tempe
Simpson, Charlie	Program Director of Interventional Products	Tempe
Smale, Joshua	Regulatory Affairs Associate	Tempe
Sourbier, Jeff	Senior Engineer (Packaging)	Tempe
Spilka, Dave	AME Engineer II	Tempe
Ta, Khoi	Patent Attorney	Tempe
Tufanyazici, Hande	Regulatory Affairs Specialist	Tempe
Uelmen, Doug	Former Vice President of Quality Assurance	Tempe
Varella, Paco	International Marketing Manager	Tempe
Walaska, Mark	Vice President, Manufacturing	Glens Falls
Walcott, Cindi	Field Assurance	Tempe
Wilson, Mark	Senior Quality Engineer (G2 Development)	Tempe
Shared Drive-Clinical	N/A	Tempe
Shared Drive-Filter	N/A	Tempe
Shared Drive-Market	N/A	Tempe
Shared Drive-Regulatory Affairs	N/A	Tempe

**ESI Collection (2010/2011)**

<b>Custodian</b>	<b>Title</b>	<b>Location</b>
Baird, Bret	Former Marketing Manager	Tempe
Carr, Robert	Former Director, Research and Development; Current Director of Technology, Acquisition & Integration	Tempe
Chanduszko, Andre	Staff Engineer	Tempe
Cherry, Joe	Manufacturing Operations	Murray Hill
Ciavarella, David	Staff Vice President Corporate Clinical Affairs Division PAT	Murray Hill
Conaway, John	Quality Engineer II, New Product Development	Tempe
Estrada, Tracy	Engineer, Research and Development	Tempe
Fitzpatrick, Ed	Engineering Manager	Glens Falls
Graves, Micky	Senior Engineer	Tempe
Harmison, Heather	Senior Engineer	Tempe
Hudnall, Janet	Marketing Manager (Filters)	Tempe

<b>Custodian</b>	<b>Title</b>	<b>Location</b>
Hudson, Brian	Quality Engineer	Tempe
Klocke, Stephanie	Senior Engineer	Tempe
McDermott, John	President	Tempe
Neal, Scott	Quality Engineering Director	Tempe
Palermo, Pete	Quality Assurance	Murray Hill
Randall, Mike	Program Manager, Research and Development	Tempe
Salzmann, Dennis	Manager, Regulatory Affairs	Tempe
Schulz, Gin	Vice President, Quality Assurance	Tempe
Simpson, Charlie	Program Director of Interventional Products	Tempe
Walcott, Cindi	Field Assurance	Tempe
Wong, Natalie	Former Senior Quality Engineer, New Product Development; Current Quality Engineering Manager in Field Assurance	Tempe





## Phillips v. C.R. Bard, Inc. et al

(3:12-cv-00344-RCJ-WGC)

### Proposed Discovery Protocol Analysis Report

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#### Summary

Through a in-depth analysis of the various proposed search criteria as detailed below, refined search criteria has been created that we believe appropriately limits Plaintiff's proposed search criteria, results in the elimination of a large percentage of non-responsive documents that were "false hits", focuses certain groups of custodians where appropriate, and substantially reduces the burden to Bard in this matter. As described in detail, the proposed new search criteria results in reducing the number of documents to review from 199,608<sup>1</sup> to 71,212, with an associated cost estimate of \$237,000<sup>2</sup>.

#### Background

Prior to this action, C.R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively "Bard"), conducted document discovery processes in related actions that resulted in 297,783 documents and 2,057,570 pages being produced from 82 custodians (the "Original Bard Custodians"). In that effort, Bard used a negotiated list of 27 search terms (the "Original Bard Search Terms"). See Appendix A. Copies of those productions have been provided to Plaintiff in this matter.

Plaintiff sought additional discovery from Bard in this matter beyond the documents previously produced. Generally speaking, Plaintiff requested that Bard (i) apply new search terms to the Original Custodians, and (ii) conduct discovery on an additional 75 custodians using both the Original Bard Search Terms and a list of newly proposed terms.<sup>3</sup> The parties conducted several meet and confer sessions, but could not agree on the scope of additional discovery.

On March 1, 2013, after hearing both parties' positions, the Court issued an Order which set forth a defined protocol for further discovery. Specifically, the Court stated that Plaintiff could (i) propose a new set of search terms to be used search on the Original Bard Custodians, and (ii) identify up to 20 new "priority" custodians ("Plaintiff's Priority Custodians") whose data would be searched both with the Original Bard Search Terms and Plaintiff's new search terms. The Court also stated that Bard would have the opportunity to object to the additional discovery if the burden was significant.

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<sup>1</sup> Bard's original estimate was 181,450 documents, but we noted that 11GB of data had not yet been searched. See *Supplemental Declaration of Brian Schrader in Support Of Bard's Motion For Protective Order Concerning ESI Discovery* at paragraph 5(a) (Dkt. No. 95-2). Searching that remaining 11GB added 18,158 documents to the overall count. Thus, we started this analysis with 199,608 documents.

<sup>2</sup> This cost estimate was derived using the average cost per document of \$3.33 from the BIA's prior estimated costs.

<sup>3</sup> Plaintiff's original list of proposed new custodians and proposed search terms have not been included in this report to prevent confusion, as both were later modified by Plaintiffs, and thus, were not subject to this analysis.

On March 11, 2013, Plaintiff presented its list of proposed new search terms<sup>4</sup> to Bard. Those search terms consisted of 32 Anchor Terms and 171 Connector Terms (“Plaintiff’s New Search Terms”). See Appendix B. Following an analysis of Plaintiff’s New Search Terms and Plaintiff’s Priority Custodians, Bard objected to Plaintiff’s requests based on the burden it would impose on Bard, namely that the combination of (i) applying the Original Bard Search Terms to Plaintiff’s Priority Custodians, and (ii) applying Plaintiff’s New Search Terms on both the Original Bard Custodians and the Plaintiff’s Priority Custodians, would result in at least 181,450 documents to review at a cost to Bard of approximately \$605,000 (as stated above, the total number after searching the last 11GB rose to 199,608). The parties could not agree on a compromise, and Bard filed for a protective order.

On May 8, 2013, Plaintiff proposed reducing the Anchor Terms in Plaintiff’s New Search Terms from the original 32 Anchor Terms to 10 Anchor Terms (specifically: Tetra, G3, Platinum, Meridian, Denali, Saturn, Silver, Vail, Venus, and Jupiter) (the “Reduced Plaintiff Anchor Terms”). While BIA was not able to test that proposed reduction prior to the hearing, that has been done since the hearing as described below.

During the May 13, 2013 hearing of *Defendants C.R. Bard, Inc. and Bard Peripheral Vascular, Inc.’s Motion for Protective Order Concerning ESI Discovery*, the Court directed Bard’s eDiscovery expert Business Intelligence Associates, Inc. (BIA) to conduct an in-depth analysis of the proposed discovery protocols subject to that motion and provide a report by Wednesday, May 22, 2013. BIA’s experts have undertaken that task, and hereby submit this report.

## The Detailed Hit Reports & Initial Analysis

To examine the effectiveness of the various search terms, BIA first created detailed hit reports<sup>5</sup> that would show how each of the various proposed search methods individually performed against each of the custodians.

We created three primary reports to help in this analysis:

1. The **Reduced Plaintiff Anchor Terms – Priority Custodians Detailed Hit Report** in Appendix C shows the number of raw hits using Plaintiff’s reduced 10 Anchor Terms with the 171 Connector Terms as applied to Plaintiff’s Priority Custodians.
2. The **Reduced Plaintiff Anchor Terms – Original Bard Custodians Detailed Hit Report** in Appendix D shows the number of raw hits using Plaintiff’s reduced 10 Anchor Terms with the 171 Connector Terms as applied to the Original Bard Custodians.

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<sup>4</sup> Plaintiff’s New Search Terms consisted of 32 “Anchor” terms and 171 “Connector” terms. The Anchor terms are the primary search terms, and the Connector terms are intended to be used in conjunction with the Anchor terms with the expectation that those Connector terms will help narrow the scope of the Anchor Terms.

<sup>5</sup> Note that all the reports include a column titled “Family Docs (without hits)”. This column identifies how many documents were pulled into a given custodian’s document collection where the documents themselves do not contain any of the proposed search terms. This function is usually referred to as “with families” and reflects the standard process in eDiscovery whereby an entire related set of documents is pulled in for review if a single member of that document set hits on a search term. For example, if an email that has two attachments hits on a search term, but the two attachments do not hit on a search term, it would result in all three documents (the email plus its two attachments) being identified for review, as any standard review does not split up “family” document sets.

3. The **Original Bard Search Terms – New Priority Custodians Detailed Hit Report** in Appendix E shows the number of raw hits using Bard’s Original Search Terms as applied to Plaintiff’s Priority Custodians.

We also created two additional reports mainly for informational purposes:

1. The **Discarded Plaintiff Anchor Terms – Priority Custodians Detailed Hit Report** in Appendix F shows the number of raw hits using Plaintiff’s discarded 22 Anchor Terms and 171 Connector Terms as applied to Plaintiff’s Priority Custodians.
2. The **Discarded Plaintiff Anchor Terms – Original Bard Custodians Detailed Hit Report** in Appendix G shows the number of raw hits using Plaintiff’s discarded 22 Anchor Terms and 171 Connector Terms as applied to the Original Bard Custodians.

For each of the above reports, we ran the individual searches and created a pivot table (basically a cross-reference chart) that lists the custodians on the left side and the search terms across the top. The result shows which terms result in abnormally high hits for certain custodians (as compared to all other results in the individual report) and overall for all custodians.

We then augmented the reports with a green-yellow-orange-red scale where green represents a relatively low hit count and red represents a relatively high hit count. This scale itself is an objective automatic formula function available in the Microsoft Excel program, and is not the result of any potentially biased subjective analysis.

## Initial Analysis of the Detailed Hit Reports

The reports, assisted by the color augmentation, helps make clear where a particular term may be abnormally high for a given custodian and which terms are abnormally high as compared with all other terms. For example, only 11 of the 27 Original Bard Search Terms make up more than 76% of the hits. With respect to Plaintiff’s New Search Terms, 7 of the Anchor Terms make up nearly 88% of the hits.

We also sorted the Custodians in each report by total number of hits so that the custodians were listed in descending order by the number of hits. With respect to the Original Bard Search Terms applied to the Priority Custodians, the top five custodians make up nearly 75% of the total hits. Likewise, with respect to the application of Plaintiff’s New Search Terms against the Original Bard Custodians and Plaintiff’s Priority Custodians, the top 14 custodians make up nearly 75% of the total hits. Three of the top five custodians in the first example are also contained within the top 14 of the second example.

That analysis allowed us to focus our efforts on the search terms and custodians that made up the vast majority of the overall results. The simple reasoning being that it would be most likely those search terms and custodians were resulting in the most significant “False Hits.”<sup>6</sup>

BIA’s experts then used that information to sample random selections of documents that hit on those custodians and/or terms, worked with others on the team who were involved in the various related reviews to formulate and test theories of how to effectively reduce the number of False Hits, and numerous other approaches. Generally speaking, BIA’s experts looked for ways to limit the search

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<sup>6</sup> A “False Hit” for purposes here refers to any document that is identified through the use of search terms that is clearly non-responsive to the issues in this matter.

criteria in a way that could help eliminate the False Hits while not materially impacting the ability of the search criteria to identify potentially responsive documents.

## Removal of Custodians and/or Search Terms

The simplest and most effective method for reducing the burden of eDiscovery is to reduce the number of custodians and/or search terms used. Indeed, late last year, the Federal Circuit Advisory Council released a model order for patent litigations that recognized that method, specifically limiting eDiscovery (at least initially) to five custodians and five search terms.

Here we have not recommended the removal of any custodians and/or search terms, as we believe that decision to be a **subjective** one that is better left to counsel. However, counsel and/or the Court can utilize the charts provided in Appendixes C-E to see the general effect removing any particular custodian and/or keyword may have on the overall document count.

## Proposed Search Alterations

Using the information in the reports and our initial analysis, BIA's experts examined a number of objective methods for potentially reducing the overall number of documents to be reviewed. Based on our analysis and on Plaintiff's offer to reduce the number of Anchor Terms, we have identified the following as the best **objective** methods to reduce the overall document count. If all of the proposals below are acceptable, the total document count will be reduced from 199,608 to 71,212.

It is important to note that some of the proposals below overlap. For example, in one proposal we recommend using Plaintiff's Connector Terms in conjunction with Bard's Original Search Terms. In another we recommend focusing the searches for the senior executives. It's likely that some documents would be ruled out by each method. This explains why you cannot simply add up the individual reductions listed under each proposal. The overall reduction stated above takes all of the proposed methods below into account.

### Proposal #1: Reducing the 32 Anchor Terms to 10 Anchor Terms

**Net Impact:** Reduces the number of documents to be reviewed by 38,775.

**Reasoning:** Plaintiff has proposed reducing the number of Anchor Terms from the initially proposed 32 Anchor Terms to 10 Anchor Terms.

### Proposal #2: Use Plaintiff's Connector Terms with Bard's Original Search Terms

**Net impact:** Reduces the documents to be reviewed by 14,824.

**Reasoning:** Plaintiff has previously proposed limiting their Anchor Terms by using 171 Connector Terms intended to narrow the scope of the primary Anchor Terms. While recognizing that Plaintiff's Connector Terms have a limited impact in reducing the number of documents returned in searches using their previously proposed 32 Anchor Terms, we found that there is benefit to be derived from using those Connectors Terms with Bard's Original Search Terms.

### Proposal #3: Better Focused Searches for Senior Executives

**Net impact:** Reduces the documents to be reviewed by 63,654.

**Reasoning:** Custodians Tim Ring, John DeFord, Gary Dolch, Bill Altonaga, Richard Bliss, Abtihal Raji-Kubba, and Mary Edwards, all part of Plaintiff's Priority Custodian set, each hold or have held senior positions at Bard. As can be seen from the report at Appendix C & E, all of these custodians are among the highest hit counts. However, given their senior positions and given that custodians Altonaga, Edwards, Bliss, Dorch and Raji-Kubba are each involved in product safety and performance areas rather than sales, marketing or other similar areas, BIA believes it is appropriate to focus the searches of their documents plus the two most senior executives, Ring and DeFord, to terms related to failure modes, thus limiting the number of marketing, sales and other similar documents from review. The total number of documents for this group of seven custodians is 90,213. Documents identified by the various failure modes are 26,559. The terms used to identify these documents include a combination of Plaintiff's Connector Terms as well as specific Bard Original Search Terms. The specific search string used is: *((Embol\*, Perforat\*, detach\*, "Deep venous thrombosis", DVT, fract\*, migrat\*, Abnormal\*, bleed\*, buckl\*, Dislodg\*, Fragment\*, hemorrhag\*, lacerat\*, protru\*, puncture\*, penetrat\*, pierc\*) & (Filter or filters or g2 or denali or vail or meridian or tetra or recovery or g1 or g3))*.

### Proposal #4: Exclusion of "off-label" related documents

**Net Impact:** Reduces the documents to be reviewed by 10,841.

**Reasoning:** Several of the Connector Terms proposed by Plaintiff relate to the issue of off label marketing. It appears that there is not an issue in the matter about off-label use, and thus, it seems appropriate to eliminate these documents from the review process. The total number of documents that will not be reviewed as a result of removing these from the reviewable document group is 10,841. The specific search string used is: "off label" or "off-label".

### Proposal #5: Exclusion of competitor product related documents

**Net Impact:** Reduces the documents to be reviewed by 3,899.

**Reasoning:** Plaintiffs removed the names of competing products from their original Anchor Terms when they proposed reducing those terms. While that eliminated most of the documents that discuss competing products, it did not remove all. Moreover, based on BIA's experience in reviewing documents for this matter and various related matters, any document that discusses competitive products generally are not critical to the issues in this litigation. The specific search string used is: "opt ease" OR optease OR birdsnest OR "bird's nest" OR celect OR greenfield OR tulip OR trapease.

### Proposal #6: Exclusion of non-relevant file types

**Net Impact:** Reduces the documents to be reviewed by 6,243.

**Reasoning:** BIA has been able to identify 6,243 files that are pulled into the review only because they are "family members" of a document that hit on search terms, but that are clearly non-responsive and would not require review. Those files are pictures or graphics and other similar file types that are

associated with email signatures and similar issues and can be identified, briefly sampled and eliminated without any need for extensive review.

#### Proposal #7: Inclusion of “bariatric” related documents

**Net Impact:** Ensures that 17,196 documents that may be otherwise excluded are specifically included.

**Reasoning:** Plaintiff appears to have an interest in documents concerning the Recovery Filter® and bariatric patients. To that end, and to ensure that those documents are not excluded by any of the above proposals, we have identified, as have Plaintiffs through certain of their proposed Connector Terms, a series of terms that will permit review of a set of documents on this topic. The total number of documents that will be reviewed as a result of identification of these documents is 17,196. The specific search string used is: "lap band" OR bariatric OR morbid\*.

**Appendix A**

**Original Bard Search Terms**

1. Filter\*
2. "Simon Nitinol"
3. G1A
4. G1\*
5. G2
6. G2X
7. G2 Express
8. Eclipse
9. RF
10. RNF
11. SNF
12. "vena cava"
13. IVC
14. Fracture\*
15. Migrat\*
16. Tilt\*
17. Perforat\*
18. Detach\* and (limb or strut)
19. electropolish
20. Electro-polish
21. EVEREST
22. "Deep venous Thrombosis"
23. DVT
24. Embol\*
25. Nitinol
26. Recovery
27. G-1\*

**Appendix B****Plaintiff's New Search Terms**

<b><u>32 Anchor Terms</u></b>	<b><u>171 Connector Terms</u></b>			
<b><i>Focused Terms:</i></b> 1. Tetra 2. G3 3. Platinum 4. Meridian 5. Denali 6. Saturn 7. Silver 8. Vail 9. Venus 10. Jupiter  <b><i>Discarded Terms:</i></b> 11. K080668 12. K062887 13. K050558 14. K082305 15. K073090 16. K052578 17. K062887 18. K093659 19. K944353 20. K022236 21. K031328 22. K101431 23. K102511 24. K112497 25. Greenfield 26. celect 27. tulip 28. "Bird's Nest" 29. "Vena Tech" 30. "Opt Ease" 31. "Trapease" 32. "Tight Spline"  *Note that the original list also included "Everest", but since that was an Original Bard Search Term, it was not included here.	1. 483 2. 25539 3. "field action" 4. "focus group" 5. "foreign body" 6. "not as intended" 7. "Performance Specification*" 8. "product life cycle" 9. 'customer needs' 10. "Division of Device Marketing Advertising and Communications" 11. "adverse event" 12. "arm length" 13. "as low as reasonably possible" 14. "blood vessel" 15. "Communication plan" 16. "Design History File" 17. "Device Master Record" 18. "enforcement action" 19. "Equity Research" 20. "Fault Tree" 21. "hook diameter" 22. "human factor*" 23. "Instructions for Use" 24. "lap band" 25. "leg span" 26. "life threatening" 27. "medical device Report" 28. "off label" 29. "product development and commercialisation plan" 30. "Product Opportunity Appraisal" 31. "radial force" 32. "root cause" 33. "Safety Communication" 34. "shape memory alloy" 35. "Shelf Life" 36. "system hazard analysis" 37. "use by date" 38. "wire diameter" 39. "Dear Doctor Letter" 40. "Dear Dr. letter"	41. "product Development" 42. "Project Team" 43. "Safety Alert" 44. 510k 45. Abnormal* 46. Aging 47. ALARP 48. anchor* 49. angulation 50. animal 51. autops* 52. bariatric 53. bleed* 54. broken 55. buckl* 56. cardiac 57. caudal 58. caus* 59. caval 60. ceph* 61. clip* 62. clot* 63. Complain* 64. contaminat* 65. corrosion 66. cross* 67. damag* 68. danger* 69. DDPAC 70. death 71. defect* 72. deform* 73. deploy* 74. design* 75. deviat* 76. DFMEA 77. DHF 78. Dislodg* 79. displac* 80. disten* 81. DMR 82. embed* 83. Endoth* 84. evaluat* 85. expire* 86. exten* 87. Extravas* 88. extru* 89. F2129 90. Fail* 91. failure*	92. fatal* 93. fatigue* 94. FDA 95. Feasibility 96. FMEA 97. FMECA 98. Fragment* 99. FTA 100. harm* 101. Hazard* 102. hemorrhag* 103. HF&E 104. HHA 105. HHE 106. histopathological 107. IFU 108. implant* 109. incident* 110. inclusion* 111. Inflamm* 112. injur* 113. Integrity 114. investigat* 115. kink* 116. lacerat* 117. lap-band 118. Lesion* 119. life-threatening 120. malfunction* 121. malposition* 122. Market* 123. material* 124. MAUDE 125. MDR 126. MHRA 127. misassembl* 128. misdeploy* 129. Missing (w/in 2 of) strut*, or component*, or leg*, or arm*, or part*, or device 130. misuse* 131. morbid* 132. mortalit* 133. movement 134. 'near incident*' 135. nitinol 136. occlu* 137. Off-label 138. organ	139. outcome* 140. pain* 141. PDCP 142. PDP 143. penetrat* 144. Pierc* 145. PLC 146. pressur* 147. problem* 148. Product Specification* 149. protr* 150. puncture* 151. Recall 152. redesign 153. renal 154. Risk 155. SAE 156. safe* 157. separat* 158. sever* 159. Stability 160. Stress* 161. tamponade 162. tenting 163. tip* 164. TPLC 165. twist* 166. Validation 167. valsalva 168. Verification 169. Vigilance 170. warning* 171. worn



**Appendix C****Reduced Plaintiff Anchor Terms – Priority Custodians Detailed Hit Report**

This report shows the number of raw hits using Plaintiff's reduced 10 Anchor Terms with the 171 Connector Terms as applied to Plaintiff's Priority Custodians. Note that if a custodian is not included on the report, it is because there were no data or search term hits.

	denali	G3	jupiter	meridian	platinum	saturn	silver	tetra	vail	venus	Family Docs	Grand Total	% Hits by Cust.	
Custodian														
DeFord, John	993	469	34	661	760	93	2,644	16	43	35	5,733	11,481	28.89%	
Ring, Tim	242	114	145	555	457	193	1,333	48	149	218	2,982	6,436	16.20%	
Modra, Chad	338	112	97	833	287	11	995	11	129	50	3,494	6,357	16.00%	
Kowalczyk, Paul	59	105	51	105	264	3	1,002	5	15	30	2,505	4,144	10.43%	
Altonaga, Bill	347	141	44	723	293	4	531	34	84	40	1,253	3,494	8.79%	
Tessmer, Alex	129	64	41	649	247		131	5	61	2	1,462	2,791	7.02%	
Raji-Kubba, AbtihaI	321	115	4	283	192	8	141	2	22	2	474	1,564	3.94%	
Edwards, Mary	2	37	19	42	71	6	132	12	16	4	617	958	2.41%	
Johnson, Michelle	7	6	83	96	23	5	90		91	10	308	719	1.81%	
Bliss, Richard		33		1	2		26		17		506	585	1.47%	
Lehmann, John	1		4	2	37		163	2	1	2	258	470	1.18%	
Dolch, Gary	27	9	4	46	32		82	2	8	2	157	369	0.93%	
Garcia, Jose		14	2	2	141		6	2	1	20	152	340	0.86%	
Glass, Holly			3				7				7	17	0.04%	
Rauch, David				2	1		1				2	6	0.02%	
Ferrin, Mandy							4		1			5	0.01%	
Total	2,466	1,219	531	4,000	2,807	323	7,288	139	638	415	19,910	39,736		
% Hits by Term	12.44%	6.15%	2.68%	20.18%	14.16%	1.63%	36.76%	0.70%	3.22%	2.09%				

**Appendix D****Reduced Plaintiff Anchor Terms – Original Bard Custodians Detailed Hit Report**

This report shows the number of raw hits using Plaintiff's reduced 10 Anchor Terms with the 171 Connector Terms as applied to the Original Bard Custodians.

Custodian	denali	G3	jupiter	meridian	platinum	saturn	silver	tetra	vail	venus	Family Docs	Grand Total	% Hits by Cust.
Beasley, Jim	175	184	64	82	681	47	960	12	100	10	2,546	4,861	20.14%
Harmison, Heather	1,086	10		745	171		9	2	298		530	2,851	11.81%
Klocke, Stephanie	24	765	14	3	346	2	79	104	9	13	905	2,264	9.38%
Conaway, John	701		1	224	12	3	21		1		507	1,470	6.09%
Estrada, Tracy	173	11		768	42		28	1	7		258	1,288	5.34%
Neal, Scott	35		7	40	66	2	558		7		461	1,176	4.87%
Salzmann, Dennis	1	16	12	5	42	5	536			6	398	1,021	4.23%
Ciavarella, David	52	8	2	4	8		589	2	3		291	959	3.97%
Carr, Robert	52	14	14	14	189	45	156	8	59	5	391	947	3.92%
Hudson, Brian	12	23	18	11	42	5	237	3	20	1	350	722	2.99%
Randall, Mike	198	56		107	119		14	2	34		147	677	2.81%
Wong, Natalie	39	127	25	29	42	1	158	11	16	2	213	663	2.75%
Chanduszko, Andre	160	194	2	25	34		9	9	3	5	195	636	2.64%
Baird, Bret	156	7	26	52	85		92		49		155	622	2.58%
Graves, Micky	60	13	5	12	108		49	4	11	5	222	489	2.03%
Schulz, Gin	9	6	15	24	36	1	139	1	4	1	196	432	1.79%
Simpson, Charlie		8	3	2	57	8	76			1	183	338	1.40%
Howard, James		18	1	7	27	1	148		4		107	313	1.30%
Nielsen, Mary		3	12	35	6		107		26		118	307	1.27%
Hudnall, Janet		28	11	3	16	8	22				169	257	1.06%
Balutowski, Genevieve			2		79	1	10			1	97	190	0.79%
Cherry, Joe		6		5	14	11	48				103	187	0.77%
Ganser, Christopher		1	1	1	28	1	99		1		46	178	0.74%
Palermo, Pete		2			25	1	46	4			94	172	0.71%
Uelmen, Doug			1	1	10	2	46		8		93	161	0.67%
Fitzpatrick, Ed	28	2	1	42	32		29		5	1	20	160	0.66%
Walcott, Cindi	1	9	9	3	13		62		3	1	52	153	0.63%
Barry, Brian			3	2	4		59			4	48	120	0.50%
Michelena, Zona							65				24	89	0.37%
Dunn, Chris				1	1		27				36	65	0.27%
Hayes, Wendy					14		7		12		23	56	0.23%
Lapid, Inbal			16		4		11			10		41	0.17%
DuBois, Tom					17		13				4	34	0.14%
DeJohn, Joe							4				25	29	0.12%
Weiland, John				4	5		14				5	28	0.12%
Byrne, Mike			3			1	5				17	26	0.11%
Ta, Khoi			4		1		8				9	22	0.09%
Brown, Brian			1		2		10		1		6	20	0.08%
Campbell, Charis				2			5		4		8	19	0.08%
Shifrin, Kevin							1		1		12	14	0.06%
Jaramillo, Lindsay					6		4				2	12	0.05%
McDermott, John				3	1		2				6	12	0.05%
Chapman, Loran							1		1		5	7	0.03%
Smale, Joshua							3			1	2	6	0.02%
Chunko, Kerry					5							5	0.02%
Madia, Frank					1		1				3	5	0.02%
Benware, Charlie					2		2					4	0.02%
Edholm, Tom					1						3	4	0.02%
Peck, Rhonda							1				3	4	0.02%
Reyes, Phillip			2							1		3	0.01%
Shahriari, Kreshmeh					1						2	3	0.01%
Gallagher, John					2							2	0.01%
Minske, Mary						1					1	2	0.01%
Varella, Paco							2					2	0.01%
Czelusniak, Kathy					1							1	0.00%
Ferari, Tom					1							1	0.00%
Gamble, Tashunda					1							1	0.00%
Ludwig, Judy			1									1	0.00%
<b>Total</b>	<b>2,962</b>	<b>1,511</b>	<b>276</b>	<b>2,256</b>	<b>2,400</b>	<b>146</b>	<b>4,572</b>	<b>163</b>	<b>687</b>	<b>68</b>	<b>9,091</b>	<b>24,132</b>	
<b>% Hits by Term</b>	<b>19.69%</b>	<b>10.05%</b>	<b>1.83%</b>	<b>15.00%</b>	<b>15.96%</b>	<b>0.97%</b>	<b>30.40%</b>	<b>1.08%</b>	<b>4.57%</b>	<b>0.45%</b>			

**Appendix E****Original Bard Search Terms – New Priority Custodians Detailed Hit Report**

This report shows the number of raw hits using Bard's Original Search Terms as applied to Plaintiff's Priority Custodians.

Custodian	G-1**	Deep Venous Thrombosis	DVT	Eclipse	Electroplasty	Embolus	Everest	Filter**	Fracture*	G1*	G1A	G2	G2 Express	G2X	I/C	limb	Migrator*	Natural	Perforator*	Recovery	Rf	Ruf	Silent Natural	Strut	Tilt*	Vena Cave	Family Docs	Grand Total	% of Total Hits by Custodian				
Deford, John	404	130	550	485	644	478	132	2,531	795	5,244	2,704	939	402	2,141	639	287	994	1,115	1,864	2,886	1,402	4,158	3,660	347	115	133	485	481	2,135	13,709	51,989	20.73%	
Modra, Chad	558	11	1,374	664	898	210	90	2,259	255	7,203	2,457	362	18	3,732	762	709	2,703	886	1,868	1,714	1,503	1,771	668	161	444	412	372	756	1,660	13,695	50.275	20.05%	
Ring, Tim	124	10	378	175	390	20	57	1,114	556	3,019	1,223	1,017	7	526	133	114	454	328	1,565	462	663	8,296	963	65	57	95	79	605	1,099	10,685	34.822	13.67%	
Altonaga, Bill	410	226	1,656	501	447	162	19	2,760	194	2,515	2,086	461	41	629	150	256	1,243	1,063	2,431	1,044	2,239	1,321	755	121	119	120	307	690	1,562	3,303	28,831	11.50%	
Edwards, Mary	150	32	222	141	46	22	12	1,288	6	3,487	648	178	85	114	145	553	412	916	1,254	576	3,397	559	223	385	697	124	160	887	4,585	21,159	8.44%		
Kowalczyk, Paul	149	23	340	83	78	49	8	704	60	1,908	481	215	47	577	145	91	212	249	656	859	682	1,556	756	12	288	213	44	247	629	5,998	17,359	6.92%	
Lehmann, John	20	395	95	624	7			1,064	1,503	2,353	854	18	322				999	304	1,184	254	293	668	1,945	730	14	130	68	313	661	1,070	6,444	16,278	6.49%
Tessmer, Alex	40	17	218	103	376	17	13	1,017	61	1,885	330	131	3	371	34	261	331	466	1,584	565	767	422	139	1	76	290	113	89	283	3,247	11,920	4.75%	
Raji-Kubba, Abthai	47	14	130	60	200	81	65	437	134	1,053	453	190	3	397	153	59	218	307	370	397	220	340	152	16	24	34	146	121	205	1,093	7,119	2.84%	
Garcia, Jose	14	35		1	15	2	28	9	692	22	109	20	972	771	9	115	6	42	386	30	63	53	72	10	29	25	27	36	1,168	4,761	1.90%		
Dolch, Gary	20	5	81	26	50	4	1	106	6	386	151	47		145	15	60	95	45	165	31	156	182	45	26	5	6	3	36	118	610	2,626	1.05%	
Johnson, Michelle	10	2	8	10	3	2	54	2	233	14	44	18	42	7	1	100	10	137	113	166	47	9	22	22	1	6	37	697	1,718	0.69%			
Bliss, Richard	69	1	117	7	16	18	3	23	1	160	84	27	7	55	34	13	13	21	103	112	104	63	39	13	13	18	17	11	29	498	1,689	0.67%	
Mukherjee, Avijit			1				4			78	6	44	44			13		13	9	6	29	4	5	1	1	1	5	16	32	312	0.12%		
Glass, Holly	2	3	4	3	1	2	32	2	38	17				7	1		6	4	19	17	12	72	9		1		1	33	17	303	0.12%		
Ferrin, Mandy		6	2						32	4						5	1	4	9	2		6			6	7		1	7		101	0.04%	
Rauch, David			1				3		12		1	1						2	1		3		1					1		5	31	0.01%	
Total	2,017	966	5,207	2,885	3,166	1,080	406	13,424	3,584	30,298	11,534	3,783	696	10,030	2,844	1,860	8,054	5,217	11,473	10,158	9,046	23,793	8,585	1,086	1,695	2,146	2,030	3,898	9,806	59,986	250,753		
% of Hits by Term	1.06%	0.51%	2.73%	1.51%	1.66%	0.57%	0.21%	7.04%	1.88%	15.88%	6.05%	1.98%	0.36%	5.26%	1.49%	0.98%	4.22%	2.73%	6.01%	5.32%	4.74%	12.47%	4.50%	0.57%	0.89%	1.12%	1.06%	2.04%	5.14%				

**Appendix F****Discarded Plaintiff Anchor Terms – Priority Custodians Detailed Hit Report**

This report shows the number of raw hits using Plaintiff's discarded 22 Anchor Terms and 171 Connector Terms as applied to Plaintiff's Priority Custodians.

Custodian	"Bird's Nest"	"Opt Ease"	"Right Spine"	"Vent Tech"	collect	Greenfield	K022236	K031328	K050558	K052578	K062887	K073090	K080668	K082305	K093659	K101431	K112487	K304353	Trapease	Tulip	Family Dogs	Grand Total	% Hits by Cust.
Modra, Chad	71	8	26	105	375	175	6	5	4	6	2	5	7	2	1	1	1	1	45	249	344	1,174	2,566 33.74%
Edwards, Mary	49	2		36		197	101	48												78	137	495	1,188 15.62%
Lehmann, John	130	5		130	1	278	13	12	12			1								96	186	245	1,109 14.58%
DeFord, John	10	1	37	22	106	142	6	6	6	2	2	10	11	4	4	3	3			34	129	314	850 11.18%
Ring, Tim	1		2	2	8	159	2	2	2											3	55	342	576 7.57%
Altonaga, Bill	21	4	15	16	60	91	4	2	2				11				1	1		45	83	134	490 6.44%
Kowalczyk, Paul		1	34	3	14	14							1	2						8	21	133	231 3.04%
Tessmer, Alex					36	14														4	46	61	161 2.12%
Garcia, Jose			42		1	1																87	133 1.75%
Raji-Kubba, Abthai	1	1	5	3	36	23		1	1	1	1	1	1	1	1	1	1			14	27	10	129 1.70%
Dolch, Gary				2		15									4					3	5	41	70 0.92%
Johnson, Michelle		2	3	3		18														2	4	32	64 0.84%
Bliss, Richard	6		1	4		5					1									5	6	3	31 0.41%
Mukherjee, Avijit				1		2																3	6 0.08%
Glass, Holly						1																	1 0.01%
<b>Total</b>	<b>289</b>	<b>24</b>	<b>163</b>	<b>327</b>	<b>637</b>	<b>1,135</b>	<b>132</b>	<b>76</b>	<b>27</b>	<b>10</b>	<b>14</b>	<b>29</b>	<b>15</b>	<b>11</b>	<b>5</b>	<b>5</b>	<b>2</b>	<b>45</b>	<b>541</b>	<b>1,044</b>	<b>3,074</b>	<b>7605</b>	
<b>% Hits by Term</b>	<b>6.38%</b>	<b>0.53%</b>	<b>3.60%</b>	<b>7.22%</b>	<b>14.06%</b>	<b>25.05%</b>	<b>2.91%</b>	<b>1.68%</b>	<b>0.60%</b>	<b>0.22%</b>	<b>0.31%</b>	<b>0.64%</b>	<b>0.33%</b>	<b>0.24%</b>	<b>0.11%</b>	<b>0.11%</b>	<b>0.04%</b>	<b>0.99%</b>	<b>11.94%</b>	<b>23.04%</b>			

**Appendix G****Discarded Plaintiff Anchor Terms – Original Bard Custodians Detailed Hit Report**

This report shows the number of raw hits using Plaintiff's discarded 22 Anchor Terms and 171 Connector Terms as applied to the Original Bard Custodians.

Custodian	"Bird's Nest"	"Opt Ease"	"tight spline"	"Vena Tech"	cellect	Greenfield	K022236	K031328	K050558	K052578	K062887	K073090	K080668	K082305	K944353	Trapease	tulip	Family Docs	Grand Total	% Hits by Cust.
Klocke, Stephanie				1,070		3	7			2								8	194	1,284 38.00%
Beasley, Jim	12	6	20	18	135	70		1					1	2	1		27	114	271	678 20.07%
Wong, Natalie				382		13	6					1						4	48	454 13.44%
DeFord, John	3			16	3	5	24										4	11	92	158 4.68%
Ganser, Christopher	23				15		28										27	34	1	128 3.79%
Chanduszko, Andre				59		2	5											6	26	98 2.90%
Hudson, Brian	1			45	2	3	15										2	4	18	90 2.66%
Simpson, Charlie				35			3												11	49 1.45%
Howard, James				3			1					2	3					2	29	40 1.18%
Hudnall, Janet				29		4	3				1							9	2	48 1.42%
Salzmann, Dennis				40															6	46 1.36%
Carr, Robert				23		2	7											2	10	44 1.30%
Ciavarella, David	4				4		6			1	1	1					6	14	5	42 1.24%
Estrada, Tracy				26			1												5	32 0.95%
Harmison, Heather				20															8	28 0.83%
Walcott, Cindi				7			15												6	28 0.83%
Schulz, Gin	2			9			2											1	6	20 0.59%
Nielsen, Mary							14										1		4	19 0.56%
Randall, Mike				7			8										2			17 0.50%
Baird, Bret						5	2											4	4	15 0.44%
Cherry, Joe							6												8	14 0.41%
Balutowski, Genevieve							1				5								3	9 0.27%
Brown, Brian							8												8	8 0.24%
DuBois, Tom	7																			7 0.21%
Conaway, John				3			2													5 0.15%
Fitzpatrick, Ed				5																5 0.15%
Dunn, Chris							3													3 0.09%
Hayes, Wendy							2												1	3 0.09%
Palermo, Pete							1												1	2 0.06%
Uelmen, Doug							1												1	2 0.06%
Weiland, John							2													2 0.06%
Barker, Elaine	1																			1 0.03%
<b>Total</b>	<b>53</b>	<b>6</b>	<b>1799</b>	<b>42</b>	<b>172</b>	<b>243</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>9</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>69</b>	<b>213</b>	<b>760</b>	<b>3379</b>	
<b>% Hits by Term</b>	<b>2.02%</b>	<b>0.23%</b>	<b>68.69%</b>	<b>1.60%</b>	<b>6.57%</b>	<b>9.28%</b>	<b>0.00%</b>	<b>0.04%</b>	<b>0.04%</b>	<b>0.34%</b>	<b>0.15%</b>	<b>0.15%</b>	<b>0.08%</b>	<b>0.04%</b>	<b>0.00%</b>	<b>2.63%</b>	<b>8.13%</b>			